

ENTERED

March 01, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:**MOUNTAIN EXPRESS OIL COMPANY,
et al.¹****Debtors.**

§	Case No.: 23-90147
§	(Jointly Administered)
§	
§	Chapter 7
§	
§	

**STIPULATION AND AGREED ORDER REGARDING FINAL APPLICATION OF
LUGENBUHL, WHEATON, PECK, RANKIN & HUBBARD
FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED AND
REIMBURSEMENT OF EXPENSES INCURRED AS SPECIAL LITIGATION
COUNSEL TO THE DEBTORS FOR THE PERIOD
FROM APRIL 7, 2023 THROUGH AUGUST 16, 2023**

[Related to Docket No. 1720]

Janet S. Northrup, the Chapter 7 Trustee (the “**Trustee**”) of the jointly administered bankruptcy estates of Mountain Express Oil Company and affiliated debtors (collectively, the “**Debtors**”) in the above-styled jointly administered chapter 7 cases and Lugenbuhl, Wheaton, Peck, Rankin & Hubbard (“**Lugenbuhl**”), by their undersigned counsel, hereby enter into this stipulation and agreed order (the “**Agreed Order**”) regarding the Final Application of Lugenbuhl, Wheaton, Peck, Rankin & Hubbard for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred as Special Litigation Counsel to the Debtors for the Period from April 7, 2023 through August 16, 2023 (the “**Application**”), as set forth below.

RECITALS

WHEREAS, on April 25, 2023, the Court entered the Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Local Rule

¹ A complete list of each of the Debtors in these Chapter 7 Cases may be obtained on the website of the Debtors’ claims and noticing agent at www.kccllc.net/mountainexpressoil.

4001-1 (I) Authorizing the Debtors to Use Cash Collateral and Obtain Post-Petition Financing, (II) Granting Liens and Providing Super-Priority Administrative Expense Status, (III) Granting Adequate Protection, and (IV) Granting Related Relief (the “**Final DIP Order**”) [Docket No. 332]. The Final DIP Order included a “**Carve-Out**” from the DIP Lenders’ collateral for fees and expenses incurred by certain chapter 11 professionals up to the amounts contained in the approved budget. Pursuant to the terms of the Final DIP Order, the Carve-Out funds for the chapter 11 professionals were to be held in escrow by Pachulski Stang Ziehl & Jones LLP (“**Pachulski**”), former counsel for the above-captioned Debtors.

WHEREAS, on October 3, 2023, Pachulski filed the Motion Of Former Counsel For The Debtors For Entry Of An Order Authorizing The Payment Of Estate Professionals’ Fees Pursuant To Final Dip Order And Professional Fee Order (the “**Reserve Distribution Motion**”) [Docket No. 1519]. According to the Distribution Motion, Pachulski is currently holding \$163,978.01 in escrow for the benefit of Lugenbuhl for fees and expenses incurred prior to August 3, 2023 (the “**Carve-Out Trigger Date**”).

WHEREAS, on November 15, 2023, Lugenbuhl filed its Application [Docket No. 1720] seeking final allowance of \$401,779.50 as fees for services rendered and \$4,450.11 as reimbursement of expenses for the period from May 26, 2023 through August 16, 2023. According to the Application, Lugenbuhl has been paid \$292,646.50 for fees and \$3,515.49 for expenses, leaving an unpaid balance of \$110,067.62 for Lugenbuhl’s fees and expenses. Pursuant to the time records provided by Lugenbuhl, \$88,587.62 of Lugenbuhl’s fees were incurred prior to the Carve-Out Trigger Date and \$21,480.00 of Lugenbuhl’s fees were incurred on or after the Carve-Out Trigger Date. All of Lugenbuhl’s expenses were incurred prior to the Carve-Out Trigger Date.

WHEREAS, the Court entered an Order Extending Scheduling Deadlines and Rescheduling of Electronic Hearing in Connection with Chapter 11 Final Fee Applications and Reserve Distribution Motion [Docket No. 1926], which set deadline to file objections to the Application and the Reserve Distribution Motion for the Trustee on February 29, 2024.

WHEREAS, the Trustee and Lugenbuhl desire to resolve any and all issues and objections to the Application.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, AND UPON APPROVAL BY THE COURT OF THIS STIPULATION AND ORDER, IT IS SO ORDERED AS FOLLOWS:

1. The above recitals are incorporated by reference herein with the same force and effect as if full set forth hereinafter.
2. The Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334.
3. The consideration of the Application is a core proceeding pursuant to 28 U.S.C. §157.
4. Notice of the Application was appropriate and no other or further notice of the Application need be given.
5. Lugenbuhl's Application is given final approval in the reduced amount of \$384,625.50 in professional and paraprofessional fees and \$4,450.11 for expenses for the period covered by the Application.
6. Within three (3) business days of entry of this Agreed Order, Pachulski shall transfer by wire pursuant to written wire transfer instructions provided to Pachulski by the Trustee,

\$163,978.01 which represents all amounts Pachulski is holding in its trust account for the benefit of Lugenbuhl pursuant to the terms of the Final DIP Order

7. On account of the unpaid balance of Lugenbuhl's fees incurred prior to the Carve-Out Trigger Date, within ten (10) days of receipt of the funds from Pachulski, the Trustee must pay Lugenbuhl the total amount of \$71,433.63 as final payment for fees incurred prior to the Carve-Out Trigger Date.

8. On account of the unpaid balance of Lugenbuhl's fees incurred on or after the Carve-Out Trigger Date, Lugenbuhl shall be paid \$6,826.23 which is equal to its pro-rata share of the \$400,000.00 held by Pachulski for chapter 11 professional that incurred fees and expenses after the Carve-Out Trigger Date (the "**Post Trigger Date Carve Out Funds**") based upon the total of all fees and expenses requested by professionals who are entitled to share in the Post Trigger Date Carve Out Funds. Payment of \$6,826.23 shall be made by the Trustee within ten (10) days of receipt of the funds from Pachulski. If, after the Trustee completes her final reconciliation of all fees and expenses entitled to share in the Post Trigger Date Carve Out Funds, any additional funds are owed to Lugenbuhl from the Post Trigger Date Carve Out Funds, then the Trustee shall make such payment to Lugenbuhl within ten (10) days after such final reconciliation is completed.

9. Upon payment of Lugenbuhl for the fees incurred prior to the Carve-Out Trigger Date, the remaining balance of \$92,544.39 shall no longer be considered part of the Carve-Out as defined in the Final DIP Order.

10. Notwithstanding anything in the Bankruptcy Code or the Bankruptcy Rules to the contrary, the terms and conditions of this Agreed Order shall be effective and enforceable immediately upon entry.

11. This Court retains exclusive jurisdiction and power with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: March 01, 2024



Eduardo V. Rodriguez
Chief United States Bankruptcy Judge

AGREED AS TO FORM AND CONTENT:

LUGENBUHL, WHEATON, PECK, RANKIN & HUBBARD

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AGREED (as to paragraphs 6 and 8):

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